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Wimbledon Fund, SPC (Class TT)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

THE WIMBLEDON FUND, SPC (CLASS TT),

Plaintiff,

vs.

GRAYBOX LLC; INTEGRATED ADMINISTRATION; EUGENE SCHER, AS TRUSTEE OF BERGSTEIN TRUST;, and CASCADE TECHNOLOGIES CORP.,

Defendants.

Case No.: 2:15-cv-06633

COMPLAINT FOR INJUNCTIVE RELIEF, AND FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS

Plaintiff, The Wimbledon Fund, SPC (Class TT) (the “Fund” or “Plaintiff”), files this Complaint against Defendants Graybox LLC (“Graybox”); Integrated Administration (“Integrated”); Eugene Scher, in his capacity as Trustee of the Bergstein Trust (“Scher”); and Cascade Technologies Corp. (“Cascade”) (collectively, “Defendants”) and states as follows:

I.

PARTIES

1. Plaintiff, The Wimbledon Fund, SPC (Class TT), is a Cayman Islands segregated portfolio company.

2. Defendant Graybox LLC is a limited liability corporation organized under the laws of Nevada with its principal place of business at 2461 Santa Monica Boulevard, Suite 135, Santa Monica, California 90404. The only member of Graybox is David Bergstein, who has his primary residence in Hidden Hills, California.

3. Defendant Integrated Administration is a corporation organized under the laws of California with its principal place of business at 34 Executive Park, Suite 210, Irvine, California 92614.

4. Defendant Eugene Scher is sued in his capacity as Trustee of the Bergstein Trust. Scher is an individual with his principal residence at 6443 Graves Avenue, Van Nuys, California 91406.

5. Defendant Cascade Technologies Corp. is a corporation organized under the laws of Wyoming with its principal place of business at 201 N. Robertson Boulevard, Suite 102, Beverly Hills, California 90211.

II.

JURISDICTION AND VENUE

6. The Court has diversity jurisdiction of this controversy pursuant to 28 U.S.C. § 1332(a)(2). The Fund is a foreign corporation and a citizen of a foreign country. Each Defendant is citizen of California. Additionally, Graybox is a citizen of Nevada, and Cascade is a citizen of Wyoming. As explained below, each

Defendant is the recipient of fraudulent transfer(s) exceeding $75,000 in the aggregate. The Fund is seeking the recovery of the amounts of these transfers.

7. Venue is proper in the United States District Court for the Central District of California because it is the judicial district in which each Defendant resides and all Defendants are residents of the State of California (*see* 28 U.S.C. §§ 1391(b)(1), (c)), or alternatively, because there is no other judicial district in which the action may be brought and it is a judicial district in which a Defendant is subject to the Court's personal jurisdiction. *See id.* §§ 1391(b)(3), (c).

III.

BACKGROUND

A. The Fund

8. Founded on or about December 18, 1995, the Fund is a pooled investment hedge fund. Although the Fund was segregated into five (5) separate classes of investment portfolios at all relevant times, the Class TT portfolio is the only one that is relevant to this lawsuit.

9. At all relevant times, the Class TT shares, including all assets derived from the sale thereof (i.e., the Class TT portfolio), were explicitly mandated by the Fund's documents to be exclusively invested, either directly or indirectly, in Tewksbury Investment Fund Ltd. (formerly known as Trout Trading Fund Ltd.) ("Tewksbury"). As is well known in financial circles, Tewksbury is a premier, multi-billion dollar hedge fund, renowned both for its stability and successful annual returns.

B. Swartz IP Services Group Inc. ("SIP")

10. Swartz IP Services Group Inc. ("SIP") was formed as a Texas corporation on December 2, 2010. Upon information and belief, it never had a business address or did any business in Texas. Its registered agent and registered office are located in Houston, Texas.

11. David Bergstein, Jerome Swartz, Aaron Grunfeld, and Kiarash Jam (collectively, the "Alter Egos") were SIP's only shareholders, directors, and officers.[1] These individuals created SIP for a single purpose: to shield them from personal liability arising from fraudulent conduct directly benefiting them. Upon information and belief, SIP has no assets, it is controlled entirely and exclusively by the Alter Egos, no person other than the Alter Egos has the authority to make any significant decisions with respect to SIP, there was a complete failure to observe any corporate formalities, no management committee was formed, no votes were ever taken on any issues, board of directors meetings were never held, and no minutes were ever taken.

12. Upon further information and belief, the Alter Egos operated SIP as if they and SIP were a single economic entity, i.e., they made no distinction between their personal finances and the finances of SIP, one-hundred percent of SIP's obligations were funded on an as-needed basis solely by the Alter Egos from their personal bank accounts or using funds pilfered from others, and the Alter Egos regularly siphoned company funds for their own personal benefit and used company offices and equipment to conduct their own personal business.

13. The Alter Egos used SIP to engage in conduct that was unfair, unjust, inequitable, tortious, and fraudulent. The Alter Egos used their position of total control to direct SIP to take actions solely based on the Alter Egos' personal interests.

14. SIP is not a real company. It is a mere fiction. SIP and the Alter Egos are one and the same.

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[1] Additional facts describing the relationships between the Alter Egos and SIP are set forth in a parallel proceeding brought by the Fund against the Alter Egos in the United States District Court for the Southern District of Texas. *See* Orig. Compl., Doc. No. 1, in *The Wimbledon Fund, SPC (Class TT) v. Bergstein*, Case No. 4:15-cv-02193.

C. The Note Purchase Agreement

i. Terms of the agreement

15. On or about November 14, 2011, the Fund entered into a Note Purchase Agreement ("NPA") with SIP. Pursuant to the NPA, the Fund had the right to purchase up to $25 million of reference notes (the "SIP Notes") issued by SIP.

16. The NPA contains numerous provisions indicating that SIP was a legitimate business entity and that the SIP Notes were a legitimate investment. The below list contains a few examples of these provisions:

- In Section 5.2, SIP represents and warrants that it is "duly authorized by the appropriate governing body" to execute the agreement;
- In Section 7.1, SIP offers to provide interim and annual financial statements, notices of board of directors meetings, and minutes from those meetings;
- In Section 7.2(a), SIP covenants to "preserve and maintain separate corporate existence and all material rights, franchises, licenses, permits, and privileges sufficient for the conduct of its business";
- In Section 7.2(e), SIP covenants to "maintain a system of accounting, and keep such books, records and accounts sufficient to permit the preparation of financial statements in accordance with GAAP";
- In Section 7.2(g), SIP covenants to make its properties, books, records, and files available for inspection;
- Section 8 explains how the SIP Notes would increase or decrease in value each year based on Tewksbury Investment Fund Ltd.'s performance, plus a premium of 1% thereon, and would become due and payable in full on November 14, 2016;
- Section 10.1 set forth SIP's obligations to satisfy a redemption request; and
- In Section 14, SIP states that the SIP notes may be presented for payment at SIP's office in Santa Monica, CA.

ii. The Fund purchased $17.7 million of SIP Notes

17. Pursuant to the NPA, in November 2011, $12.5 million from the Fund's Class TT portfolio was used to purchase SIP Notes. In December 2011, an additional $5.5 million from the Fund's Class TT portfolio was used to purchase SIP Notes.

D. Defendants receive millions of dollars of the Fund's investments through fraudulent transfers out of SIP's bank accounts

i. Transfers from the Deutsche Bank accounts to Defendants

18. The Fund's November 2011 investment of $12.5 million was wired to SIP's Deutsche Bank accounts. Through a series of transfers to third parties that are operated by and/or for the benefit of the Alter Egos, nearly half of the investment was transferred out of the accounts within just twelve days of receipt, and the accounts were almost entirely depleted within a mere eight months of the investment. These transfers were entirely inconsistent with the clear and unambiguous terms of the NPA. As explained in the subsequent paragraphs, many of these transfers were made to Defendants.

19. There were sixteen transfers to Graybox totaling $1.8 million. David Bergstein is the entity's sole managing member.

20. There were sixteen transfers totaling approximately $2 million to Integrated. Upon information and belief, Integrated is controlled by David Bergstein and Kiarash Jam in their capacities as majority shareholders, officers, and/or directors. Kiarash Jam also serves as Integrated's registered agent.

21. There were three transfers to Eugene Scher as Trustee for the Bergstein Trust totaling $125,000. Upon information and belief, the trust owns David Bergstein's real property located throughout the country.

22. Scher is the marketing director of K.Jam Media, an entity owned by Kiarash Jam. The "business address" for SIP is the same as that for K.Jam Media.

23. Scher is also the CEO and COO of Cascade. Jerome Swartz is a director of Cascade. There was a transfer of $200,000 from SIP's Deutsche Bank accounts to Cascade.

ii. Transfers from the Wells Fargo account to Defendants

24. The Fund's December 2011 investment of $5.2 million was wired to SIP's Wells Fargo account. By the end of that month, the account's ending balance was approximately $68,000. By the end of April 2012, the account balance was approximately $17,000. Like the Deutsche Bank accounts, this account's funds were depleted through transfers to, in part, Defendants.

25. There were two transfers totaling $300,000 to Graybox.

26. There was a $100,000 transfer to Eugene Scher as Trustee for the Bergstein Trust.

27. There were six transactions totaling approximately $2.2 million that are described in Wells Fargo's bank records as "withdrawals made in branch" or "bank originated debit." Upon information and belief some of these funds were diverted to Defendants.

iii. SIP ignored redemption requests and an acceleration notice

28. Pursuant to the NPA, in August and October 2012, redemption requests were made on SIP. A final redemption request for approximately $4.7 million was made in January 2013. SIP ignored these redemption requests.

29. On February 4, 2013, the Fund declared the SIP notes immediately due and payable. SIP ignored this acceleration notice.

30. On February 8, 2013, the Texas Secretary of State forfeited SIP's certificate of formation pursuant to §171.309 of the Texas Tax Code.

31. On that same date, the Fund sued SIP for breach of contract in New York state court. On July 14, 2015, the New York state Court entered an award against SIP and in favor of the Fund in the amount of $18,171,635.

FIRST CLAIM FOR RELIEF
(For Avoidance and Recovery of Fraudulent Transfers Pursuant to California Civil Code §§ 3439.04, 3439.05, and 3439.07)
(Against Defendant Graybox)

32. The Fund re-alleges and incorporates by reference the factual allegations contained in Paragraphs 6 through 31 above.

33. Shortly after the Fund invested in SIP, Graybox received sixteen transfers totaling $1.8 million from SIP's Deutsche Bank accounts and two transfers totaling $300,000 from SIP's Wells Fargo accounts (collectively, the "Graybox Transfers").

34. At all relevant times, including the dates of the Graybox Transfers, SIP was insolvent. As a fictitious corporate shell, SIP continuously transferred its only assets – investments from defrauded investors – for the direct personal benefit of the Alter Egos.

35. SIP made the Graybox Transfers in furtherance of its (and the Alter Egos') fraudulent scheme. The Graybox Transfers were made to and for the benefit of an insider (David Bergstein), meaning that the Alter Egos were in continuous possession of the Fund's investments.

36. The Graybox Transfers were not disclosed to the Fund during the term of the NPA.

37. SIP received no value in exchange for the Graybox Transfers.

38. When Graybox received the Graybox Transfers, it had full knowledge of the above-referenced fraudulent scheme.

39. The Fund seeks a judgment against Graybox for the value of any and all fraudulent transfers, including the Graybox Transfers, from SIP to Graybox, in the approximate amount of $2,100,000.00.

40. Accordingly, the Graybox Transfers are avoidable, and should be avoided, as fraudulent pursuant to Cal. Civ. Code § § 3439.04-.05, and may be recovered from Graybox pursuant to Cal. Civ. Code § 3439.07.

41. Pursuant to the breach-of-contract judgment against SIP, the Fund seeks to attach and execute upon the funds included in the Graybox Transfers.

42. The Fund seeks an injunction against further disposition of the Graybox Transfers and the proceeds of the Graybox Transfers.

43. SIP and Graybox conspired to deceive the Fund and acted with malice, oppression, and in conscious disregard of the Fund's rights by intentionally depleting SIP's bank accounts of the Fund's investments for the benefit of the Alter Egos and to avoid repayment of the investments. Accordingly, the Fund is entitled to punitive and exemplary damages in an amount to be proved at trial.

44. On July 28 and 29, 2015, David Bergstein participated in a mediation relating to the *In re Aramid Entm't Fund Ltd., et al.* Chapter 11 bankruptcy proceeding as Case No. 14-11902 (SHL) in the United States Bankruptcy Court for the Southern District of New York. The debtors agreed to compensate David Bergstein for his efforts in helping settle a claim for $17.5 million. Pursuant to a settlement agreement, of the $17.5 million, the debtors agreed to pay $2.9 million to Graybox "in accordance with the written [wire transfer] instructions provided by Mr. Bergstein" within three business days of one of the debtors' receipt of the global settlement amount. The Bankruptcy Rule 9019 motion to approve the settlement agreement is currently scheduled for September 8, 2015. The global settlement amount is supposed to be transferred within fifteen calendar days after enforceable orders approving the motion are entered. In the event that the settlement is approved, the Fund will file a separate motion for a preliminary injunction regarding the settlement funds to be transferred to Graybox.

SECOND CLAIM FOR RELIEF
(For Avoidance and Recovery of Fraudulent Transfers Pursuant to California Civil Code §§ 3439.04, 3439.05, and 3439.07)
(Against Defendant Integrated)

44. The Fund re-alleges and incorporates by reference the factual allegations contained in Paragraphs 6 through 31 above.

45. Shortly after the Fund invested in SIP, Integrated received sixteen transfers totaling $2 million from SIP's Deutsche Bank accounts (collectively, the "Integrated Transfers").

46. At all relevant times, including the dates of the Integrated Transfers, SIP was insolvent. As a fictitious corporate shell, SIP continuously transferred its only assets – investments from defrauded investors – for the direct personal benefit of the Alter Egos.

47. SIP made the Integrated Transfers in furtherance of its (and the Alter Egos') fraudulent scheme. The Integrated Transfers were made to and for the benefit of insiders (David Bergstein and Kiarash Jam), meaning that the Alter Egos were in continuous possession of the Fund's investments.

48. The Integrated Transfers were not disclosed to the Fund during the term of the NPA.

49. SIP received no value in exchange for the Integrated Transfers.

50. When Integrated received the Integrated Transfers, it had full knowledge of the above-referenced fraudulent scheme.

51. The Fund seeks a judgment against Integrated for the value of any and all fraudulent transfers, including the Integrated Transfers, from SIP to Integrated , in the approximate amount of $2,000,000.00.

52. Accordingly, the Integrated Transfers are avoidable, and should be avoided, as fraudulent pursuant to Cal. Civ. Code § § 3439.04-.05, and may be recovered from Integrated pursuant to Cal. Civ. Code § 3439.07.

53. Pursuant to the breach-of-contract judgment against SIP, the Fund seeks to attach and execute upon the funds included in the Integrated Transfers.

54. The Fund seeks an injunction against further disposition of the Integrated Transfers and the proceeds of the Integrated Transfers.

55. SIP and Integrated conspired to deceive the Fund and acted with malice, oppression, and in conscious disregard of the Fund's rights by intentionally depleting

SIP's bank accounts of the Fund's investments for the benefit of the Alter Egos and to avoid repayment of the investments. Accordingly, the Fund is entitled to punitive and exemplary damages in an amount to be proved at trial.

THIRD CLAIM FOR RELIEF
(For Avoidance and Recovery of Fraudulent Transfers Pursuant to California Civil Code §§ 3439.04, 3439.05, and 3439.07)
(Against Defendant Scher)

55. The Fund re-alleges and incorporates by reference the factual allegations contained in Paragraphs 6 through 31 above.

56. Shortly after the Fund invested in SIP, Scher received three transfers totaling $125,000 from SIP's Deutsche Bank accounts and one transfer of $100,000 from SIP's Wells Fargo accounts (collectively, the "Scher Transfers").

57. At all relevant times, including the dates of the Scher Transfers, SIP was insolvent. As a fictitious corporate shell, SIP continuously transferred its only assets – investments from defrauded investors – for the direct personal benefit of the Alter Egos.

58. SIP made the Scher Transfers in furtherance of its (and the Alter Egos') fraudulent scheme. The Scher Transfers were made to and for the benefit of an insider (David Bergstein), meaning that the Alter Egos were in continuous possession of the Fund's investments.

59. The Scher Transfers were not disclosed to the Fund during the term of the NPA.

60. SIP received no value in exchange for the Scher Transfers.

61. When Scher received the Scher Transfers, it had full knowledge of the above-referenced fraudulent scheme.

62. The Fund seeks a judgment against Scher for the value of any and all fraudulent transfers, including the Scher Transfers, from SIP to Scher, in the approximate amount of $225,000.00.

63. Accordingly, the Scher Transfers are avoidable, and should be avoided, as fraudulent pursuant to Cal. Civ. Code § § 3439.04-.05, and may be recovered from Scher pursuant to Cal. Civ. Code § 3439.07.

64. Pursuant to the breach-of-contract judgment against SIP, the Fund seeks to attach and execute upon the funds included in the Scher Transfers.

65. The Fund seeks an injunction against further disposition of the Scher Transfers and the proceeds of the Scher Transfers.

66. SIP and Scher conspired to deceive the Fund and acted with malice, oppression, and in conscious disregard of the Fund's rights by intentionally depleting SIP's bank accounts of the Fund's investments for the benefit of the Alter Egos and to avoid repayment of the investments. Accordingly, the Fund is entitled to punitive and exemplary damages in an amount to be proved at trial.

FOURTH CLAIM FOR RELIEF
(For Avoidance and Recovery of Fraudulent Transfers Pursuant to California Civil Code §§ 3439.04, 3439.05, and 3439.07)
(Against Defendant Cascade)

66. The Fund re-alleges and incorporates by reference the factual allegations contained in Paragraphs 6 through 31 above.

67. Shortly after the Fund invested in SIP, Cascade received a transfer of $200,000 from SIP's Deutsche Bank accounts (the "Cascade Transfer").

68. At all relevant times, including the date of the Cascade Transfer, SIP was insolvent. As a fictitious corporate shell, SIP continuously transferred its only assets – investments from defrauded investors – for the direct personal benefit of the Alter Egos.

69. SIP made the Cascade Transfer in furtherance of its (and the Alter Egos') fraudulent scheme. The Cascade Transfer was made to and for the benefit of an insider (Jerome Swartz), meaning that the Alter Egos were in continuous possession of the Fund's investments.

70. The Cascade Transfer was not disclosed to the Fund during the term of the NPA.

71. SIP received no value in exchange for the Cascade Transfer.

72. When Cascade received the Cascade Transfer, it had full knowledge of the above-referenced fraudulent scheme.

73. The Fund seeks a judgment against Cascade for the value of any and all fraudulent transfers, including the Cascade Transfer, from SIP to Cascade, in the approximate amount of $200,000.00.

74. Accordingly, the Scher Transfers are avoidable, and should be avoided, as fraudulent pursuant to Cal. Civ. Code § § 3439.04-.05, and may be recovered from Scher pursuant to Cal. Civ. Code § 3439.07.

75. Pursuant to the breach-of-contract judgment against SIP, the Fund seeks to attach and execute upon the funds included in the Cascade Transfer.

76. The Fund seeks an injunction against further disposition of the Cascade Transfer and the proceeds of the Cascade Transfer.

77. SIP and Cascade conspired to deceive the Fund and acted with malice, oppression, and in conscious disregard of the Fund's rights by intentionally depleting SIP's bank accounts of the Fund's investments for the benefit of the Alter Egos and to avoid repayment of the investments. Accordingly, the Fund is entitled to punitive and exemplary damages in an amount to be proved at trial.

JURY TRIAL DEMAND

78. The Fund demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiff The Wimbledon Fund, SPC (Class TT) respectfully prays that Defendants be cited to appear and answer herein, and that upon final trial thereof, that judgment be awarded against each Defendant as follows:

(a) On the First Claim for relief, for the avoidance and recovery of all Graybox Transfers, and for award of judgment to Plaintiff in an amount to be proven at trial;

(b) On the Second Claim for Relief, for the avoidance and recovery of all Integrated Transfers, and for award of judgment to Plaintiff in an amount to be proven at trial;

(c) On the Third Claim for Relief, for the avoidance and recovery of all Scher Transfers, and for award of judgment to Plaintiff in an amount to be proven at trial;

(d) On the Fourth Claim for Relief, for the avoidance and recovery of the Cascade Transfer, and for award of judgment to Plaintiff in an amount to be proven at trial;

(e) On all claims for relief, for injunctive relief against each Defendant preventing further disposition, transfer, hypothecation, or alienation of the funds fraudulently transferred to it by Swartz IP Services Group Inc.;

(f) For punitive damages; and

(g) Such other relief, both special and general, at law and in equity, to which Plaintiff may be justly entitled.

Dated: August 28, 2015

COLE SCHOTZ P.C.

-and-

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